Filed 7/6/09 Ishaia Trading Corp. v. Anter CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ISHAIA TRADING CORP. et al., Plaintiffs and Appellants, v. OVED ANTER et al., Defendants and Respondents.	B205916 (Los Angeles County Super. Ct. Nos. BC341830, BC347759)
EMILE CHAYTO S.A. et al., Plaintiffs and Appellants, v. OVED ANTER et al., Defendants and Respondents.	
FIRST INTERNATIONAL DIAMOND, INC., Cross-complainant and Respondent, v. ISHAIA TRADING CORP. et al., Cross-defendants and Appellants.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Joseph R. Kalin, Judge. Affirmed.

Sheppard, Mullin, Richter & Hampton, Andre J. Cronthall, Mary E. Gram for Plaintiffs, Cross-defendants and Appellants Ishaia Trading Corp., Emile Chayto S.A. and Gidish S.A., and Plaintiffs and Appellants Torroni S.A. and Rima Investors Corp.

Kinsella Weitzman Iser Kump & Aldisert, Dale F. Kinsella, Gregory J. Aldisert for Defendants and Respondents Oved Anter, First International Diamond, Inc., Wieder & Shifman, Inc., Wieder & Shifman, Ltd., and Ouri Shifmann, and Cross-complainant First International Diamond, Inc.

Plaintiffs, foreign corporations engaged in the purchase and sale of jewelry,[1] allege they were the victims of an elaborate swindle perpetrated in Marbella, Spain, which resulted in the theft of approximately $10 million of gems, when the gems were sold on consignment but without any ensuing payment. Four cut gems were involved: a 23.87 carat, pear-shaped, D-color, flawless diamond, a 43.34 carat sapphire, a 15.75 carat diamond, and a 16.62 carat diamond.

After a nonjury trial seeking to establish ownership and return of the gems, the court found against plaintiffs and in favor of defendant and cross-complainant First International Diamond, Inc. (FID), declaring FID the legal owner of the four gems with the right to possess them.[2] Plaintiffs were unsuccessful in suing FID and other defendants because the trial court found that FID subsequently purchased the gems from another party (Ali Achmed) in good faith without notice of any other claims and for prices within the range of fair market value. Plaintiffs did not sue the consignees (Emile Chayto and Albert Shamash) who delivered the gems but failed to obtain payment.

On appeal, plaintiffs contend that Spanish law rather than California law applies, that under Spanish civil law a party unlawfully deprived of property by fraud may recover its property regardless of the good faith of a subsequent purchaser, and that even applying California law FID was not a good faith purchaser and should not prevail.

---

[1] The plaintiff consignors are (1) Ishaia Trading Corp. (Ishaia), a New York corporation owned by Ishaia Gol, a resident of New York, (2) Gidish S.A. (Gidish), a Swiss corporation owned by David Gol, resident of Monaco and the brother of Ishaia Gol, and (3) Torroni S.A. (Torroni), a Swiss corporation owned by Guiseppe Torroni, a resident of Geneva, Switzerland. Other plaintiffs are (4) Emile Chayto S.A, a Swiss corporation whose principal was Emile Chayto, a resident of Geneva and a consignee of the jewels, as well as the owner of the stolen sapphire and part owner of the two smaller diamonds, and (5) Rima Investors Corp. (Rima), a New York corporation whose principal was Amir Khazaneh, a part owner with Chayto of one of the smaller diamonds.

[2] Others unsuccessfully sued by plaintiffs include defendant Ouri Shifman, a resident of Israel and a co-owner of defendant corporation Wieder & Shifman, Ltd., and defendant Oved Anter, a California resident and owner of defendant California corporation FID (as well as nonparty Israeli corporation FID Ltd).

Additionally, plaintiffs contend the trial court abused its discretion by failing to grant a continuance of the trial date. We find plaintiffs' contentions without merit and affirm.

EVIDENCE AT TRIAL AND THE COURT'S FINDINGS

The consignment of gems to other dealers is customary in the diamond trade. Such transactions are generally based on trust and the known reputation of the dealers. Chayto was a known diamond dealer. As consignee of the diamonds, Chayto had the absolute right to possess the gems and the authority to sell them or consign them to other dealers or individuals. Chayto's obligation to the consignors was to pay them the price set forth in the consignment memo or to return the gems. In the ordinary course of business, any amount for which he sold the gems above the consignment price would be his profit.

It is also the custom in the diamond trade that the consignor is not told the identity of the consignee's buyer, and the consignee issues a written invoice to the buyer upon payment. Despite consignment memos that stated that the consignor must authorize the sale, the practice in the diamond trade is that a consignment sale need not be approved or authorized by the owner so long as the owner receives the consignment price. Thus, as the trial court found, Chayto (and subsequently his consignee, Shamash) were authorized to sell and transfer the gems in question.

After having obtained possession the four gems in question, Chayto consigned and delivered possession of them to Shamash. The transaction between Chayto and Shamash was, as the trial court found, not in any way irregular or illegal and was in the regular and ordinary course of business. Chayto had known Shamash for many years, had done business with him in the past, and had no reason to suspect that Shamash would not have a legitimate buyer for the gems.

However, the ensuing transaction was somewhat different than the typical transaction because after the diamonds were consigned to Shamash, Chayto became involved in the transaction with the supposed buyer of the gems, a Mrs. Mobutu, and her purported British attorney, Edward Martin. As the transaction progressed, Chayto was to receive payment for the gems directly from the buyer (or her agents) at what the trial

court determined would be "a fantastic profit well in excess of the value of the gems." However, Chayto was given postdated bad checks and bank drafts for the wire transfer of funds that did not exist. The trial court found that Chayto, who acted both as the consignee and consignor of the gems, was "grossly negligent" in his dealings with third parties regarding the gems consigned and entrusted to him, permitting an elaborate scam by others who obtained the gems without paying for them.

Specifically, the sequence of events started in February of 2005, when Shamash informed Chayto that a Mrs. Mobutu, the alleged wife of the former leader of the Congo, wanted to sell some uncut diamonds. Chayto travelled to Marbella several times in March and April of 2005 for the purpose of meeting Mrs. Mobutu and seeing the uncut stones, but he was never able to see her. In April of 2005, according to Chayto, the situation with Mrs. Mobutu changed: she now wanted not to sell, but rather to buy diamonds and jewelry. Mrs. Mobutu was allegedly having a party for members of the Congolese government and wanted to buy diamonds and jewelry to provide as gifts. Chayto and Shamash agreed that they would locate high-quality diamonds and jewelry to sell to Mrs. Mobutu.

Before spending time to obtain diamonds and jewelry for this transaction, Chayto set up a "test" sale for Mrs. Mobutu. He arranged to sell her some expensive Chopard watches to ensure that she was a legitimate buyer with the financial ability to purchase expensive diamonds. Chayto flew to Marbella, provided the watches to Shamash, and received two checks from the bank account of an unknown person. One check was dated April 22, 2005, in the amount of 500,000 euros, and the other check was postdated May 6, 2005, in the amount of 145,000 euros.

Chayto never contacted the bank to determine whether the account had sufficient funds, and he did not deposit the first check until three weeks later, on May 17, 2005. Three weeks after that, on June 7, 2005, the bank informed Chayto that the larger initial check was no good. However, if Chayto had deposited the check on the date he had received it (April 26, 2005), he would have known the check was no good before he consigned the four gems to Shamash.

Before their disposition by Shamash, the gems had been transferred several times with increased consignment values. Ishaia and Gidish jointly owned the 23.87 carat diamond, which in October of 2004 Ishaia consigned for sale to Gidish for $65,000 per carat. On May 17, 2005, Gidish consigned it to Chayto for $75,000 per carat. One day later, Chayto consigned it to Shamash for $85,000 per carat.

Chayto and Torroni jointly owned the 15.75 carat diamond. Torroni consigned it to Chayto on May 25, 2005, for $550,000. A week later, Chayto consigned it to Shamash for $650,000. Chayto and Rima jointly owned the 16.62 carat diamond, which on June 1, 2005, Rima consigned to Chayto for $800,000, plus profits. Several days later, Chayto consigned it to Shamash for $1.2 million. Chayto owned the 43.34 carat sapphire, which he bought from Rima in June of 2002 for $360,000. On June 6, 2005, Chayto consigned the sapphire to Shamash for $850,000.

Meanwhile, in late April of 2005, Chayto and Shamash met in Marbella with Ali Kassim Hammoud and Edward Martin, who introduced himself as a British attorney. Both men were supposed to be intermediaries in the sale of the diamonds to Mrs. Mobutu. Chayto never conducted any due diligence or credit check on Mrs. Mobutu or the intermediaries. Chayto never attempted to contact Martin's law firm in London by using the information on Martin's stationery, and Chayto was not suspicious of Martin's use of a Hotmail address for his business e-mail address.

On May 2, 2005, although at that point Chayto had never met Mrs. Mobutu, Chayto turned over to Shamash 2 million euros worth of diamonds for Mrs. Mobutu, and he subsequently gave an additional 5.6 million euros worth of gems to Shamash. Thus, having delivered the gems to Shamash, Chayto no longer had the gems nor had he received any money for them. Chayto, however, did receive promises of money from Martin. Martin gave Chayto a letter dated May 11, 2005, purporting to confirm the wire transfer of approximately 13 million euros to Chayto's bank account, but Chayto did not contact the bank to confirm the wire transfers (which were never sent). Despite not having received payment for the diamonds previously delivered to Shamash, on May 19, 2005, Chayto delivered to Shamash the 23.87 carat diamond with the original

Gemological Institute of America (GIA) certificate. Martin thereafter gave Chayto another letter dated May 27, 2005, asserting that 12 million euros would be transferred from his account to Chayto's bank account for the purchase of diamonds. Again, Chayto did not confirm the validity of this second wire transfer (which was also a sham). Although Chayto had not yet actually received any money for the diamonds, he delivered the 15.75 carat diamond to Shamash.

On June 2, 2005, Chayto received a copy of a purported bank transfer of 15 million euros to arrive in his bank account on June 7. On June 6, without waiting for any wire transfers to clear, Chayto delivered to Shamash the 16.62 carat diamond and the 43.34 carat sapphire. After learning that no wire transfer went through, Chayto returned to Marbella to see Shamash. Once there, Chayto accepted a handwritten guarantee of 15 million euros from Shamash's wife. Chayto also received from Shamash's wife two checks totaling approximately 12 million euros, but postdated by one month (and which ultimately bounced).

Chayto asserted that at this point he still was not alarmed or suspicious about the buyer or the intermediaries. Nonetheless, Martin and Shamash arranged for Chayto to meet Mrs. Mobutu in London. On June 23, 2005, Chayto, Shamash, and his wife were put up in a very expensive hotel suite in London. The next day, they were driven by limousine to another hotel to meet Mrs. Mobutu at her suite, which took up the entire floor of the hotel. They waited while Mrs. Mobutu transacted other business, and then they were checked for weapons by bodyguards and led to the suite to meet her. There, Mrs. Mobutu (an imposter) spoke briefly with Chayto and advised him that there was a problem getting her money out of Zaire, but that the money would be available soon. Chayto did not demand payment, any security, or the return of the gems. Nor did he at that time contact the police or attempt to verify Mrs. Mobutu's identity or the validity of her statements. Chayto waited until August 2, 2005, to file a police report in Spain. Chayto never asserted a civil claim against Shamash for breach of the consignment agreement or against Shamash's wife for breach of her written guarantee.

The trial court noted that because Shamash did not testify at trial and also had not been deposed, "it is unclear what he did with the gems after they were given to him by Chayto. Eventually, the gems came into the possession of . . . Ali Kassim Hammoud, also known as Ali Achmed. He professed to be an intermediary in the sale of the gems to the impostor Mrs. Mobutu, which was known to Chayto but unknown to Ouri Shifman."

Meanwhile, through Shifman's brother-in-law, who also worked in the diamond business, Shifman become aware that a 23.87 carat diamond was on the market for sale. On May 26, 2005, Shifman met with Achmed in Marbella, where he saw the diamond and the original GIA certificate. Achmed asserted he was selling gems on behalf of an Arab woman who was concerned about being dispossessed of her personal property by her husband. Shifman spent substantial time with Achmed in Marbella, and Achmed appeared to be well-known in Marbella and a knowledgeable diamond dealer.

There were no public sources of information regarding diamond dealers in Marbella to check Achmed's status. The trial court found that "Shifman observed reasonable commercial standards of fair dealing in the trade by not conducting any further investigation into Achmed's background in light of the familial and business ties, particularly given the importance of relationships in the diamond trade." Shifman did check with the GIA to see if there were any red flags on the diamond, meaning whether there was any notice that the gem was stolen or missing. The inquiry was negative. Shifman also had a gemologist, the manager of the International Gemological Institute, examine the diamond for clarity and value. The trial court found that, "These actions would indicate Shifman believed he was buying a legitimate diamond as he was conducting the transaction openly and involving third parties who were part of the diamond trade."

Because Shifman could not by himself fund the purchase of such an expensive diamond, he partnered with Oved Anter, whose company (FID) was in the wholesale diamond business in Los Angeles and regularly dealt in large stones. Shifman and Anter agreed that FID would own the diamonds and arrange for resale, and FID would split the profits with Shifman's company (Wieder & Shifman).

To determine an appropriate price, Anter contacted another diamond dealer, William Kung, who informed Anter that the 23.87 carat diamond was worth $60,000 per carat. Anter also used the Rapaport Diamond Report, a trade publication that estimates the value of diamonds. Shifman negotiated the final $1,386,260 purchase price ($58,075 per carat) over the course of a few days.

The trial court found that the purchase price "was within the range of what a similar diamond would sell for and was fair market value. Shifman purchased the diamond and received the original GIA certificate. If Achmed did not have the right to sell the diamond or obtained it by fraud, this was unknown to Shifman and he was a good faith bonafide purchaser for value. This transaction concluded on May 31, 2005."

Thereafter, Achmed offered to sell to Shifman the three other gems—the 16.62 carat diamond, the 15.75 carat diamond, and the 43.34 carat sapphire. Shifman did not want to purchase the sapphire, but Achmed insisted that the three gems be sold together. Ultimately, Shifman agreed to purchase the three gems. The trial court concluded that as with the prior transaction, Shifman had no reason to believe that Achmed did not have lawful possession of the gems and the right to sell them. Shifman paid $1.25 million for the three gems—$650,000 for the 16.62 carat diamond, $450,000 for the 15.75 carat diamond, and $150,000 for the 43.34 carat sapphire.

Although Shifman was directed to pay portions of the purchase price to third parties, such payments are common in the diamond trade. Shifman was also directed to pay a portion of the purchase price in cash (including the cashier's check payable to "the holder"), but cash payments are also common in the diamond trade. The trial court found that "nothing regarding the method or manner of payment put Shifman on notice that there was anything wrong with these transactions." Moreover, the trial court concluded that because the invoice for the largest diamond listed the price as $900,000, and the invoice for the other three gems (which lumped the two diamonds together and omitted any reference to the sapphire) were prepared in this manner at Shifman's direction, any inaccuracies in the invoices did not put Shifman on notice that there was anything wrong with the purchases. And, the invoices were not forged or altered in any way by Shifman.

Moreover, the trial court found Shifman a credible witness and pointed to several factors providing substantial evidence for the conclusion that he made the purchases in good faith: (1) almost 90 percent of the payments for the four gems were made through banks; (2) Shifman and Anter declined to buy other diamonds from Achmed because they could not agree on a price: (3) Shifman and Anter initially attempted to sell the 23.87 carat diamond and the 15.75 carat diamond in two of the largest diamond markets in the world; (4) Shifman and Anter submitted the 15.75 carat diamond and the 16.62 carat diamond (after it was recut) to the GIA shortly after buying them, which would have resulted in the GIA's confiscating the diamonds if either had been reported stolen; and (5) Shifman and Anter offered to return the gems to the plaintiffs in exchange for reimbursement of the purchase price paid.

The trial court rejected testimony that the four gems were purchased for substantially less than their fair market value, and found no basis for Shifman to believe that the gems were stolen or that Achmed did not own or have the right to sell the gems. Further, the court found that Shifman acted in good faith, honestly believed he was engaging in legitimate purchases, was unaware of anyone else's ownership claim to the gems, and observed reasonable care and reasonable commercial standards of fair dealing in the diamond trade throughout the course of the transactions at issue. The court emphasized that the "hole in the evidence" was that once the gems were properly and legally consigned to Shamash, the trail of the gems was lost until defendants purchased the gems from Achmed.

Finally, on the choice of law issue, the trial court applied the governmental interest test and found no compelling reason to apply Spanish law. The court found that although the bulk of the fraudulent activity occurred in Spain, none of the parties is a Spanish resident, and Spain has no interest in protecting nonresidents in their disputes regarding title to personal property with other nonresidents. The trial court applied the law of California, where the gems are now located, where plaintiffs chose to file the lawsuit, and where three defendants are located (Anter, FID and Wieder & Shifman). It found that

California has an interest in protecting the sanctity of title of bona fide purchasers and promoting the finality of legitimate purchases made in global commerce.

The court concluded that under California law, the defendants purchased the gems in good faith from persons who had apparent title and at least voidable title, and that plaintiffs' causes of action were unavailing. Regarding FID's cross-complaint for declaratory relief, the court found it was entitled to possession of the gems and had valid title to them.

Plaintiffs appeal.

DISCUSSION

Plaintiffs raise three contentions. First, they urge that Spanish civil law applies, which they interpret as establishing that owners of property taken by fraud are entitled to the return of their property from the purchaser, even if the purchase was made in good faith by a buyer innocent of any knowledge of the fraud. According to plaintiffs, Spanish civil law conflicts with California law, which would protect a good faith purchaser for value. Second, plaintiffs urge that even if California law is applied to this case, substantial evidence does not support the trial court's determination that defendants satisfied their burden of establishing that they were indeed good faith purchasers. Lastly, plaintiffs contend that the trial court abused its broad discretion in denying a continuance of the trial. As discussed below, the contentions are without merit.

I. California law applies under the governmental interest analysis.

When the laws of two or more jurisdictions are urged on a California court, the court must follow a "governmental interest" analysis to determine which law to apply. (*Kearney v. Salomon Smith Barney, Inc.* (2006) 39 Cal.4th 95, 107-108.) Under the governmental interest analysis, the court first determines whether the applicable rules of law of the potentially concerned jurisdictions are the same or different. If the applicable rules of law are identical, the court may apply California law. If the applicable rules of law differ materially, the court proceeds to the second step, which involves an examination of the interests of each jurisdiction in having its own law applied to the particular dispute. If each jurisdiction has an interest in applying its own law to the issue,

there is a "true conflict" and the court must proceed to the third step. In the third step, known as the comparative impairment analysis, the court determines which jurisdiction has a greater interest in the application of its own law to the issue or, conversely, which jurisdiction's interest would be more significantly impaired if its law were not applied. The court must apply the law of the jurisdiction whose interest would be more significantly impaired if its law were not applied. (*Ibid.*; *Washington Mutual Bank v. Superior Court* (2001) 24 Cal.4th 906, 919-920.)

Thus, "California follows a three-step 'governmental interest analysis' to address conflict of laws claims and ascertain the most appropriate law applicable to the issues where there is no effective choice-of-law agreement." (*Washington Mutual, supra,* 24 Cal.4th at p. 919.) This analysis applies "whether the dispute arises out of contract or tort [citations], and a separate conflict of laws inquiry must be made with respect to each issue in the case [citations]." (*Id.* at p. 920.)

"[N]ormally, even in cases involving foreign elements, the court should be expected, as a matter of course, to apply the rule of decision found in the law of the forum." (*Hurtado v. Superior Court* (1974) 11 Cal.3d 574, 581.) There is a "presumption that California law applies unless the proponent of foreign law can show otherwise." (*Marsh v. Burrell* (N.D.Cal. 1992) 805 F.Supp. 1493, 1496 [applying California law].) When a litigant invokes foreign law, it must "demonstrate that the [foreign] rule of decision will further the interest of the foreign state and therefore that it is an appropriate one for the forum to apply . . . ." (*Hurtado v. Superior Court, supra,* 1 Cal.3d at p. 581.) The burden of proving that a foreign jurisdiction's law applies is therefore on the party invoking the foreign rule of decision. (*McGhee v. Arabian American Oil Co.* (9th Cir. 1989) 871 F.2d 1412, 1422.)

In the present case, the second step of the governmental interest analysis—determining whether Spain has a legitimate interest in applying its law to this case—is the most straightforward approach to resolving the choice of law question. If Spain has no interest, there is no need to analyze the nuances of Spanish law (i.e., Germanic versus Romanic Spanish civil law and various interpretations of Spanish case law). We thus

need not determine the more complex question of whether Spanish law is the same as California law.

Focusing on the second step of the governmental interest analysis, we conclude that Spain, unlike California, has no legitimate interest in applying its laws to this lawsuit. Assuming arguendo that Spanish law permits the original owner of lost or stolen goods to recover them from a subsequent innocent bona fide purchaser, the question remains: who does Spain intend to protect by such a law? The logical and quite obvious answer is that Spain intends by this law to protect the citizens and residents of Spain. Spain may have a general interest in regulating commerce to protect its citizens' title to goods, but it has no legitimate interest in protecting nonresidents whose property was taken allegedly by fraud by other nonresidents.

Plaintiffs argue that Spain is already applying its laws in a criminal prosecution against Shamash and others, and that Spain has an interest in its applying law to prevent inconsistent rulings. Although Spain does have an interest in prosecuting crimes that occur within its borders, it does not necessarily follow that Spain has an interest in applying its civil law to this lawsuit in California. The outcome of the criminal proceeding against others will not affect whether defendants will be considered bona fide purchasers for value or not. None of the defendants in the Spanish criminal proceeding are even parties here. Application of California law to the present case in California will not impair Spain's interest in deterring the criminal conduct of third parties occurring in Spain.

We acknowledge that California law will not be applied merely because California is the forum where the complaint was filed and the jurisdiction where the defendants reside. (See *Hernandez v. Burger* (1980) 102 Cal.App.3d 795, 801; *Howe v. Diversified Builders, Inc.* (1968) 262 Cal.App.2d 741, 746-747.) Nor is it appropriate for the choice of law "to turn on" events happening after the underlying incident, because otherwise forum shopping might be encouraged. (*Reich v. Purcell* (1967) 67 Cal.2d 551, 555.) Due process prohibits a forum from applying its substantive law to the claims of nonresident plaintiffs unless it has a substantial connection to the cause of action at issue.

(*Washington Mutual Bank v. Superior Court, supra*, 24 Cal.4th 906, 919; *Stonewall Surplus Lines Ins. Co. v. Johnson Controls, Inc.* (1993) 14 Cal.App.4th 637, 649-650.)

However, a jurisdiction will not have a substantial connection or interest simply because it is the site of the wrongful act. For example, in *Reich v. Purcell, supra*, 67 Cal.2d 551, an Illinois resident sued a California resident in California in an action arising out of a car accident that occurred in Missouri. Although Missouri was properly concerned with conduct within its borders, the laws controlling how damages for past conduct are calculated had nothing to do with controlling future conduct. "The state of the place of the wrong has little or no interest in such compensation when none of the parties reside there." (*Id.* at p. 556.)

Here, none of the parties is a Spanish resident. The plaintiffs consist of two New York corporations (Ishaia Trading Corp. and Rima Investors Corp.), and three Swiss corporations (Gidish S.A., Emile Chayto S.A., and Torroni S.A.). The defendants consist of one California resident (Oved Anter), two California corporations (FID and Wieder & Shifman), and one Israeli resident (Ouri Shifman). Plaintiffs have cited no California case where a California court has applied the law of a foreign country to a dispute in a California courtroom where none of the parties reside in or maintain a place of business in that foreign country. That is no doubt because with no litigants to protect, a foreign country has little or no interest in having its laws apply to a case in California.

On the other hand, California has an interest in applying its laws to this case. California is not only the forum, but it is the forum that the plaintiffs chose. There is no "'compelling reason'" to displace the law of the forum. (*Kasel v. Remington Arms Co.* (1972) 24 Cal.App.3d 711, 731.) Significantly, California has a strong and legitimate interest in protecting its residents who are good faith purchasers by applying its laws regarding commercial transactions, so that they may conduct business and be secure in their title to goods wherever purchased. (See *Dixon Mobile Homes v. Walters* (1975) 48 Cal.App.3d 964, 972, disapproved of on other grounds in *Bullis v. Security Pac. Nat. Bank* (1978) 21 Cal.3d 801, 815, fn. 18.) Thus, Spain's interest in regulating transactions

within its borders between nonresidents is minimal, in comparison to California's stronger interest in protecting its residents who buy goods abroad.

Moreover, defendant Oved Anter is a California resident, and the main office of his company (FID) is in California. The trial court found that defendant FID owned the gems, and that the gems were located in California. FID partially paid for the stones with funds from California, and FID attempted to sell the diamonds in California. Thus, the defendants' contacts with California directly related to the plaintiffs' consumer-based causes of action and the California statutes relied on in plaintiffs' complaint.[3]

Accordingly, California does have an interest in applying its laws to the present case, and Spain has no interest in applying its laws. California law applies, and there is no need to investigate Spanish civil law (i.e., whether the Germanic or the Romanic interpretation of the Spanish Civil Code prevails) and to determine whether California and Spanish law differ in their treatment of the rights of a bona fide purchaser for value.

II. Under California law, defendants are bona fide purchasers for value who purchased the gems from a person with voidable title.

A. The applicable California law.

A bona fide purchaser is one who pays value, in good faith, and without actual or constructive notice of another's rights in the property. (*Oakdale Village Group v. Fong* (1996) 43 Cal.App.4th 539, 547.) The trial court found that defendants met this test, and that defendants purchased the gems from "persons who had apparent title but at least voidable title." We find this conclusion is supported by substantial evidence.

California law distinguishes between the person who purchased from someone who obtained title to the property by fraud and the person who purchased from a thief who had no title to sell. An involuntary transfer results in void title, while a voluntary transfer, even if fraudulent, results in voidable title. (Cal. U. Com. Code, § 2403, subd.

---

3 The operative second amended complaint asserted claims for claim and delivery (Code Civ. Proc., § 667), conversion (Civ. Code, §§ 3336, 2223, 2224), damages for fraudulent transfer (Civ. Code, §§ 3439-3439.12), and treble damages for receipt of stolen property (Pen. Code, § 496, subd. (c)). We also note that the second amended complaint did not allege that Spanish law applied.

(1);[4] *Suburban Motors, Inc. v. State Farm Mut. Auto. Ins. Co.* (1990) 218 Cal.App.3d 1354, 1360-1361.) "As a general rule, an innocent purchaser for value and without actual or constructive notice that [the] vendor has secured the goods by a fraudulent purchase is not liable for conversion." (5 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 716, p. 1040.) However, the rule is different when it comes to involuntary transfers: because "[s]tolen property remains stolen property," a thief "cannot convey valid title to an innocent purchaser of stolen property." (*Naftzger v. American Numismatic Society* (1996) 42 Cal.App.4th 421, 432.)

In the present case, according to plaintiffs' own theory, either one of two scenarios addressed in Commercial Code, section 2403, subdivision (1), applies to this case, and under either scenario good title passes under California law. Under one scenario, the "transferor was deceived as to the identity of the purchaser" (§ 2403, subd. (1)(a))—i.e., Chayto was deceived as to the true identity of Mrs. Mobutu. Under the other scenario, the "delivery was procured through fraud punishable as larcenous under the criminal law" (§ 2403, subd. (1)(d))—i.e., Chayto's delivery of the gems to Shamash was procured by fraud. Under either scenario, because Shamash had voidable title, he could transfer good title even if he procured the gems from Chayto through fraud punishable as larceny. If, as plaintiffs assert, Shamash and Achmed were both involved in the scam together, then Achmed acquired voidable title from Shamash, and he was able to transfer good title to the defendants. (The only way Achmed would have less than voidable title is if Achmed stole the stones from Shamash, and there is no evidence of that.)

B. Defendants had no notice of any competing claims to the gems, and substantial evidence supports the trial court's finding that defendants purchased the gems in good faith.

At the time the defendants purchased the gems, they did not know the gems were on consignment from plaintiffs. They had never communicated with plaintiffs, and defendants did not know Shamash, Martin or Mrs. Mobutu. Defendants contacted the

---

[4] All such statutory references are to the California Uniform Commercial Code, hereinafter referred to as the Commercial Code.

GIA on several occasions through mid-August of 2005 to see if the diamonds had been reported lost or stolen, and there were no red flags indicating any problem. Such checks with the GIA did not reveal any concrete suspicions, but rather demonstrated appropriate prudence in the purchase of such expensive gems.

The trial court's finding that defendants "purchased the gems in good faith" is supported by several factors, including the following: Achmed appeared knowledgeable in the diamond industry and was well-known in Marbella; Shifman brought to Marbella a manager of the International Gemological Institute lab in Belgium to ensure the gems had not been chemically altered by Achmed; the transaction was done through the public banking system, with 90 percent of the payments made through banks; Shifman received the original GIA certificate for the largest diamond in question, which was akin to having title for the diamond; Shifman did not buy another large diamond from Achmed because his asking price was too high; defendants openly placed two of the diamonds for sale in two of the largest markets for diamonds in the world, an unlikely scenario for someone trying to sell goods known to be stolen; defendants submitted two of the diamonds to the GIA for new certification, thus risking their confiscation if either had been reported as lost or stolen; and upon learning of the problem with the gems, defendants asked Achmed to cancel the transaction in exchange for the return of their money and offered to assist plaintiffs.

Moreover, contrary to plaintiffs' assertion, the purchase prices for the gems were within the range of fair market value, further indicating a good faith purchase by defendants. A bona fide purchaser for "value" need only give "any consideration sufficient to support a simple contract." (Com. Code, § 1204, subd. (4).) Although the "value" required of a bona fide purchaser need not be fair market value (*Melendrez v. D & I Investment, Inc.* (2005) 127 Cal.App.4th 1238, 1252-1253), defendants properly acknowledge that a purchase price far below fair market value may bear on the buyer's good faith.

Here, Ishaia conceded that even a price 20 percent below fair market value would not raise a red flag regarding the transaction. The trial court found that the prices

defendants actually paid for the four gems were within the range of what similar gems would sell for and were fair market value. The trial court specifically rejected the testimony of plaintiffs' expert witness (Cosmo Altobelli) that the four gems were purportedly purchased for substantially less than fair market value. Plaintiffs' expert witness never inspected the gems, and did not analyze the sales history or the consignment history of the gems. Plaintiffs' expert witness relied primarily on the asking prices rather than the actual sales prices in determining his valuations, though he conceded that comparable sales were the most valuable guides in appraising diamonds.

The valuation of the 23.87 carat diamond is indicative of the fair market valuation of all four gems and supports the conclusion that there was nothing about the price which in any way constituted a red flag for the defendants. Defendants purchased that diamond in May of 2005 for $1,386,260, or $58,000 per carat. This stone had a D-color rating (which is the best color), was flawless in clarity (also the best), and was cut in the shape of an elongated pear. The original owner (Ishaia Gol) bought the stone as a 29.05 carat diamond for $1,060,325, or $36,000 per carat. He then had the stone re-cut to its current size of 23.87 carats. Significantly, Gol himself testified that the sale of that diamond at $58,000 per carat was "within reason." Indeed, just 15 months before the sale, Ishaia had consigned the diamond to a third party for $51,529 per carat.

Moreover, FID sold a one-half interest in the 23.87 carat diamond for $750,000, or $62,840 per carat. Anter and Kung both testified that the $1.5 million price was the fair market value. Also, there were three auction sales of large, pear-shaped, D-color, flawless diamonds in May of 2005. When the 12 percent action commission is subtracted, the sale price of those three diamonds was an average of $57,949 per carat—which is very close to what the defendants actually paid for the 23.87 carat diamond.

Accordingly, there was substantial evidence to support the conclusion that the $58,000 per carat ($1,386,260) paid by defendants for the 23.87 carat diamond was within the range of the fair market value. Similarly, other evidence likewise established that the defendants paid fair market value for the three other gems, as well, and thus were good faith purchasers.

Nor did the documentation and manner of payment raise any red flags such as to defeat defendants' status as a good faith purchaser. The trial court specifically rejected the testimony of plaintiffs' expert witness (Keith Kinsel) that the documentation relating to the purchases was such as to negate the defendants' purchase of the gems in good faith. Plaintiffs urge that Achmed's payment requests and the invoices should have put Shifman on notice that the deal was not legitimate. However, as the trial court found, the documentation of transactions in the diamond trade is informal. The only documentation generally is an invoice issued by the seller and the evidence of payment by the buyer.

Further undermining plaintiffs' theory, and the credibility of their expert, was the following finding by the trial court: "[T]he invoice for the 23.87 carat diamond which listed the price as $900,000 and the invoice for the other three stones (which lumps the two diamonds together and omits any reference to the sapphire) were prepared in this manner at the direction of Shifman. Accordingly, the inaccuracies in the invoices did not put [Shifman] on notice that there was anything wrong with the purchases.[5] The Court accepts Shifman's explanation for why he requested the invoices to be prepared as they were." Although defendants initially paid only $900,000, that was the only money immediately available, and the balance was paid thereafter. Defendants insured the 23.87 carat diamond in the amount of $1.4 million for transit to the United States. Additionally, the Marbella bank's summary of deposits and withdrawals from Shifman's account is consistent with payment of $1,386,260 for the 23.87 carat diamond.

Plaintiffs also urge that Shifman should have conducted an investigation of Achmed. However, as the trial court further found, wholesale diamond dealers transact business based on relationships and the word of fellow dealers, and Shifman's initial contact with Achmed was through Shifman's brother-in-law, David Perez, the manager of the Morocco operation for Wieder & Shifman. Perez told Shifman that he had met Achmed's wife (Awisha), who offered to sell him a large gem and to introduce him to her husband. When Shifman later met Achmed, he appeared to Shifman to be

---

5 We also note that Gidish, Chayto and Torroni had used invoices with gems lumped together on their own invoices.

knowledgeable about the diamond industry and well-known in the Marbella community. With the benefit of hindsight, a thorough investigation of Achmed would have been advisable. However, viewed in its proper context at the time, substantial evidence supports the trial court's reasonable conclusion that Shifman acted in good faith.

Conclusion.

Accordingly, defendants are bona fide purchasers for value who purchased the gems from a person with voidable title. We conclude, as did the trial court, that because Shamash had voidable title and defendants were bonafide purchasers for value, and because under California law "[a] person with voidable title has power to transfer a good title to a good faith purchaser for value" (Com. Code, § 2403, subd. (1)), plaintiffs do not have good title, and their claims against defendants are without merit.[6]

III. The trial court did not abuse its broad discretion in denying a continuance of the trial date.

A trial judge "'must exercise his discretion with due regard to all interests involved, and the refusal of a continuance which has the practical effect of denying the applicant a fair hearing is reversible error.'" (*In re Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1169.) Nonetheless, "[t]o ensure the prompt disposition of civil cases, the dates assigned for a trial are firm. All parties and their counsel must regard the date set for trial as certain." (Cal. Rules of Court, rule 3.1332(a).) "[C]ontinuances of trials are disfavored . . . . The court may grant a continuance only on an affirmative showing of good cause requiring the continuance. Circumstances that may indicate good cause include [in pertinent part]: (1) The unavailability of an essential lay or expert witness because of *death, illness, or other excusable circumstances*; [or] (2) The unavailability of

---

6 It is thus unnecessary to address defendants' defense that plaintiffs are judicially estopped from claiming that Spanish law applies because of plaintiffs' reliance on California law in the second amended complaint and in their prior requests for a temporary restraining order and for injunctive relief.

It is also unnecessary to discuss defendants' assertion that Chayto's gross negligence bars plaintiffs from recovery of the gems.

a party because of *death, illness, or other excusable circumstances* . . . ." (Cal. Rules of Court, rule 3.1332(c), italics added.)

In the present case, the original trial date of July 9, 2007, was set on December 20, 2006. Plaintiffs did not oppose defendants' request on May 18, 2007, for a two-week continuance of the trial date to July 23, 2007. As defendants point out, if plaintiffs were not available in August, they should have opposed the request for a continuance of the July 9 date or requested a date not so close to the end of July. The case trailed for a week and then was assigned to Judge Joseph Kalin, whose first hearing in this case was on July 30, 2007.

Plaintiffs pursued an ex parte application to continue the trial date three times—before Judge Edward Ferns (the original trial judge), before Judge Lee Edmon (in another department), and before Judge Kalin. Each judge refused to continue the trial. Plaintiffs also filed a petition for writ relief, which we summarily denied.

The basis for plaintiffs seeking a continuance was that all five plaintiffs were or would be on vacation or business trips during the entire period of the two-week trial. At the hearing on July 30, 2007, plaintiffs presented this argument without any supporting evidence. In support of a renewed ex parte application on August 1, 2007, Ishaia Gol submitted a declaration asserting he had a business trip to Russia, and then would be on vacation with his family in Israel. Amir Khazaneh (from Rima) submitted a declaration that he was going to Switzerland for one week on business and then to Greece for over one week on vacation. As for Chayto—arguably, a key witness in this case—plaintiffs' counsel mentioned at the hearing on July 30, 2007, that Chayto had unexplained medical issues. Plaintiffs' counsel then testified at the hearing on August 1, 2007, that he tried to contact Chayto for two days but was unable to reach him.

At trial, among the plaintiffs only Ishaia Gol appeared and testified; Chayto, Gidish, Torroni, and Rima did not personally testify. Plaintiffs presented the testimony of various witnesses, including Chayto, through their typed deposition testimony or videotaped testimony. Contrary to plaintiffs' assertion, the denial of the requested continuance did not amount to a terminating sanction. Particularly because the plaintiffs'

requested continuance was on the eve of trial, was premised largely on previously known vacation plans (and not based on death, illness, or other excusable circumstance), and was preceded by a continuance obtained by defendants (see Cal. Rules of Court, rule 3.1332(d)), the trial court did not abuse its broad discretion in denying the request.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS.

BOREN, P.J.

We concur:

DOI TODD, J.

CHAVEZ, J.